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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 DONALD DOUGLAS BONE,) No. C 07-3314 MMC (PR)
11 Plaintiff,) **ORDER DENYING MOTION TO**
12 v.) **REOPEN**
13 CALIFORNIA DEPARTMENT OF) **(Docket No. 9)**
14 CORRECTIONS AND)
15 REHABILITATION, et al.,)
Defendants.)

16 The above-titled action was opened on June 25, 2007, when plaintiff, a California
17 prisoner proceeding pro se, filed a letter complaining that he was being denied emergency
18 dental care at the Correctional Training Facility at Soledad. In the letter, plaintiff stated that
19 on June 7, 2007, he had filed a first-level emergency medical appeal requesting dental care,
20 and that the appeal had been forwarded to the second level of review, where it was still
21 pending. On July 11, 2007, in response to the Court's notice that plaintiff must file either a
22 petition or complaint, plaintiff filed a civil rights complaint under 42 U.S.C. § 1983, in which
23 he alleged he was still awaiting adequate dental care and that his medical appeal was still in
24 progress. He asked the Court to issue an order requiring prison officials to provide him with
25 a root canal.

26 On January 2, 2008, the Court dismissed the complaint without prejudice because it
27 was clear from the complaint that plaintiff has not pursued all levels of administrative review
28 available to him before filing suit, and there was no applicable exception to the exhaustion

1 requirement. On January 14, 2008, plaintiff, who currently is incarcerated at the California
2 Men's Colony in San Luis Obispo, California, filed a motion to reopen the action on the
3 ground that his administrative remedies are now exhausted, in that he received a denial of his
4 administrative appeal from the Director's level of review on November 20, 2007.


5 Although plaintiff alleges the exhaustion of his administrative remedies, such
6 allegations do not provide grounds to reopen the action, as exhaustion must be completed
7 *before* a plaintiff files his action. Specifically, if the plaintiff has not exhausted his
8 administrative remedies before filing suit, the action must be dismissed. McKinney v. Carey,
9 311 F.3d 1198, 1199 (9th Cir. 2002). Here, at the time he filed this action, plaintiff had not
10 exhausted his administrative remedies; consequently, the action was properly dismissed and
11 will not be reopened.

12 Accordingly, plaintiff's motion to reopen is hereby DENIED.

13 This order terminates Docket No. 9.

14 IT IS SO ORDERED.

15 DATED: May 6, 2008

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17 MAKINE M. CHESNEY
18 United States District Judge
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